

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALISON POCHVATILLA

Plaintiff,

v.

UNIVERSITY OF DELAWARE, a
Delaware Corporation,

Defendant.

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C.A. No.: 03C-11-015 SCD

ORDER

This 3rd day of February, 2005, the Defendant's motion for summary judgment having been duly considered, it appears that:

1. Based on Plaintiff's testimony, this incident arises from events occurring on November 17, 2001. Shortly after 5 a.m., Plaintiff, then a student at the University of Delaware, living in one of its dormitories, heard someone trying to get into her room through her locked door. The person(s) at her dormitory room were unable to be identified by the Plaintiff, and have not identified themselves.

2. Plaintiff looked out the "peep hole" of her door to determine the identity of the person or persons at her door, but the peep hole appeared to be blocked from the outside. The unknown person(s) continued to make efforts to enter the dormitory room by shaking the door handle and by attempting to slide something in between the doorframe and the door.

3. Plaintiff called campus security on the phone but was unable to reach anyone. The University of Delaware's records indicate that the 911 call was made at 5:12:51 and was picked up at 5:12:58.

4. By the time the University's security office had picked up the incoming 911 call, Plaintiff had hung up the phone. Plaintiff has testified that she called 911 again, but may have misdialed.

5. Still fearing an intruder, Plaintiff jumped out of her second story window, injuring herself. She then crawled back into the building and hid – from everyone, including University police responding to her call – in a first floor men's room.

6. Uncontradicted testimony given by University security personnel and supported by University records¹ reveals that: a) Plaintiff's call was answered in the call center at 5:13:37;² b) Upon hearing no caller's voice, the call center, with the assistance of technology identifying the caller's location, dispatched an officer in less than a minute at 5:14:41 while repeatedly trying to call Plaintiff's room; c) An officer arrived at Plaintiff's dorm at 5:15:20 - less than two minutes after Plaintiff's call was received; d) There was no answer at Plaintiff's locked door. Neither an intruder nor signs of attempted entry were observed; e) Responding officers called back to request keys to Plaintiff's room at 5:19:13. They found no one in Plaintiff's room, whereupon they searched the surrounding grounds and found nothing; f) About one hour later, Plaintiff crawled or hobbled out of the men's room in which she had been hiding and knocked at the door of a Resident Assistant on that floor; g) Plaintiff was quickly transported to a hospital; h) All officers who responded that morning attended a certified police training academy, in most cases, the Delaware State Police Academy.

7. By failing to respond, Plaintiff is deemed to have admitted the University's Request for Admission which states that Plaintiff has no evidence that the University breached the standard of care applicable to it in providing for her security on the night in question.³

8. It is clear the University owed a duty to Plaintiff to protect her in her dormitory. It is equally clear that Plaintiff has failed to present any evidence which creates a factual issue as to a breach of that duty. There is nothing in the record to indicate that the University security personnel acted in any way other than professionally and effectively in responding to the events that morning.

9. A motion for summary judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁴ In determining whether there is a genuine issue of material fact, the evidence must be viewed in the light most favorable to the non-moving party.⁵

10. There are no issues of material fact. The University's security personnel responded promptly to Plaintiff's 911 call.

¹ See deposition transcripts of Anderson, Baird, Falkenburg, Ivory, Miller and Rahmer, attached to Defendant's motion for summary judgment (Exhibits C, D, E, F, G, and H, respectively). See also crime report forms attached as Exhibit I to Defendant's motion for summary judgment.

² The apparent discrepancy in times is a result of the University's two distinct and separate time systems that are used to record 911 activities, but are not synchronized. The 911 System Log records information related solely to the phone system. The Racal WordNet system records times officers are dispatched. The phone call recorded as received at 5:12:51 on the 911 System Log is the same phone call recorded as received at 5:13:37 on the Racal WordNet System. See affidavit of Captain Joel Ivory, attached to Defendant's reply.

³ Failure to respond to requests for admissions results in the admissions deemed admitted. Super. Ct. Civ. R. 36.

⁴ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96 (Del. 1992).

⁵ *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

WHEREFORE, the University's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

Pesco

/s/ Susan C. Del

Judge Susan C. Del Pesco

Original to Prothonotary (via e-file)

xc: Martin J. Siegel Esquire (via e-file)

William E. Manning, Esquire (via e-file)